

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant: **Proudler, Graeme John** ) Examiner: **Davis, Zachary A.**  
Serial No.: **09/920,554** )  
Filed: **August 01, 2001** ) Art Unit: **2137**  
For: **"PERFORMANCE OF A SERVICE** ) Our Ref: **B-4240 618934-9**  
**ON A COMPUTING PLATFORM"** )  
 ) Date: **June 12, 2008**  
 ) Re: ***Reply Brief pursuant to 37 CFR***  
 ) ***41.41***

## REPLY BRIEF

## Commissioner for Patents

Sir:

This is a Reply Brief pursuant to 37 CFR 41.41 in response to the Examiner's Answer issued on April 17, 2008 as to the above-referenced application.

The Examiner and Appellant disagree whether claims 1-6, 14-26, 29 and 31 are patentable under 35 U.S.C. 103(a) over U.S. Pat. No. 6,289,462 to McNabb and U.S. Pat. No. 6,327,652 to England. This Brief replies to the Examiner's answers to Appellant's arguments against these references and the Examiner's interpretation thereof.

## REMARKS

The comments in Appellant's Brief on Appeal dated January 4, 2008 are incorporated herein by reference.

## ARGUMENTS

The Appellant respectfully disagrees with a number of points of the Examiner's Answer, as detailed hereafter. The remarks hereafter are directed at claim 1 as pending. The Appellant respectfully submits that remarks similar to those made to show that claim 1 is non-obvious and patentable over McNabb and England can also be made to show that independent claim 24 is non-obvious and patentable over McNabb and England.

### No motivation to combine McNabb and England

In page 3 of the Examiner's Answer, the Examiner acknowledges that "McNabb does not explicitly disclose details of establishing the trust in the computer system, nor does McNabb explicitly disclose levels of trust", but nevertheless opines that the motivation to combine McNabb and England "is to be found in England, as cited in the previous Office action, namely to guarantee the ability to distinguish between trusted and non-trusted systems executing on the same computer".

The Appellant respectfully disagrees.

The Appellant notes that opining that the skilled person would have been motivated to combine McNabb and England "*to guarantee the ability to distinguish between trusted and non-trusted systems executing on the same computer*", as does the Examiner, implies opining that there are such things as a "*trusted system*" and a "*non-trusted system*" executing on McNabb's computer.

However, McNabb discloses (see for example independent claim 9) "a

trusted server computing system for permitting controlled execution of processes in response to a request". The Appellant respectfully submits that it seems downright doubtful that there are such things as a "*trusted system*" and a "*non-trusted system*" executing on the trusted server of McNabb, that need to be distinguished.

Further, the Examiner himself acknowledges that "McNabb does not explicitly disclose details of establishing the trust in the computer system, nor does McNabb explicitly disclose levels of trust". The Appellant respectfully submits that at least because, as acknowledged by the Examiner, McNabb does not disclose levels of Trust, it is nonsensical to opine that McNabb teaches both a "*trusted system*" and a "*non-trusted system*" executing on the trusted server of McNabb, which would have led the skilled person to combine England to McNabb "to guarantee the ability to distinguish between trusted and non-trusted systems executing on the same computer".

On the contrary, the Appellant respectfully submits that since "McNabb does not explicitly disclose details of establishing the trust in the computer system, nor does McNabb explicitly disclose levels of trust", McNabb does not teach a trusted server executing both a "*trusted system*" and a "*non-trusted system*", whereby the skilled person would not have been motivated "*to guarantee the ability to distinguish between trusted and non-trusted systems executing on the same computer*", whereby the skilled person would not have been motivated to combine McNabb and England.

The Appellant respectfully submits that at least in view of the above, and even assuming that England and McNabb both disclose what the Examiner says they disclose, the Examiner has failed to show that the skilled person would have found any motivation to combine McNabb and England. The Appellant

respectfully submits that the combination of McNabb and England only derives from hindsight knowledge of claim 1, and finds no basis in McNabb or England.

McNabb and England are not analogous art

In page 8 of the Answer, the Examiner opines that the criterion for determining obviousness is that there is a “reasonable expectation of success”. The Examiner further opines that “because both the McNabb and England references are directed to secure and/or trusted operating systems, and are therefore analogous art, there would be a reasonable expectation that one would be successful in combining features from the two systems”.

The Appellant respectfully disagrees with the Examiner. Indeed, the Examiner acknowledges that “McNabb does not explicitly disclose details of establishing the trust in the computer system, nor does McNabb explicitly disclose levels of trust”. The Examiner further states (for example page 3 of the Answer) that “McNabb discloses a method including a requester providing a specification of a service to be performed that establishes required sensitivity levels”.

On another hand, the Examiner states (for example page 3 of the Answer) that “England discloses a method in which an operating system is securely loaded where each component is associated with a trust level”.

In other words, the Examiner argues that McNabb relates to secure operating systems, and that England relates to trusted operating systems, and then concludes that McNabb and England both are directed to secure and/or trusted operating systems, “and are therefore analogous art”. However, the Appellant notes that the Examiner actually failed to show why secure operating

systems and trusted operating systems would be analogous art. The Appellant respectfully submits that it is hardly enough to opine that a reference belongs to field A and another reference belongs to field B, to conclude that both references belong to the field of A/B “and are therefore analogous art”.

The Examiner asserts, page 11 of the Answer, that while the use of a trusted server computer in McNabb is “an example embodiment of a trusted computer as described in McNabb, the disclosure in McNabb is more general in that McNabb disclosure can relate to computer systems in general (see column 1, lines 12-17, generally describing the field of the McNabb reference, and more particularly column 8, lines 40-45, describing a general trusted computer system, which is not necessarily a server)”.

The Appellant respectfully disagrees and notes that column 1, lines 12-17 of McNabb recites that the invention of McNabb “generally relates to computer system security”, whereas column 8, lines 40-45 gives a general definition of a “trusted computer system”. Thus, the above excerpts are only directed at general background teachings. However, the Appellant notes that each of the independent claims of McNabb recites a trusted server. Independent claim 1 of McNabb and relates to controlling access to a commercial software product executing on the trusted server; independent claim 7 of McNabb relates to controlling access to a process of the trusted server that perform secondary checks, and independent claim 9 of McNabb relates to the trusted server permitting controlled execution of processes in response to a request. The Appellant respectfully submits that, by reciting the feature of a “trusted server” in each independent claim, McNabb explicitly teaches that a “trusted server” is a necessary feature of McNabb’s teachings, and not only an example embodiment,

contrary to the Examiner's assertion.

The Examiner asserts, page 11 of the Answer, that England only describes a client computer as a non-limiting example, under the rationale that the excerpt cited by the Appellant, column 3, lines 56-61, does not explicitly mention the type of computer on which the operating system would be running. However, the Appellant respectfully notes that the Examiner has taken the above excerpt out of its context. Indeed, column 3, lines 47-61 of England recites that "On the more general subject of client-side rights management, several systems exist or have been proposed to encapsulate data and rights in a tamper-resistant software package. An early example is IBM's Cryptolope. Another existent commercial implementation of a rights management system has been developed by Intertrust. In the audio domain, AT&T Research have proposed their "A2b" audio rights management system based on the PolicyMaker rights management system. Therefore, there is a need in the art for guaranteeing that a digital rights management operating system has been properly loaded on a computer. Furthermore, such a digital rights management operating system must be readily discernable from a non-trusted operating system executing on the same computer".

The Appellant respectfully submit that, at least in view of the above, and contrary to the Examiner's assertion, England explicitly mentions that the type of computer on which its operating system would be running is on "client-side"; or in other words that England's computer is a client computer.

In summary, as outlined in the Brief of Appeal of January 4, 2008 and contrary to the assertions of the Examiner: on one hand McNabb teaches modifying the operating system of a Server (trusted server, see for example claim

1 of McNabb) to make sure that a remote user cannot use any loophole of the operating system to gain unauthorized access to the server; and on another hand England teaches modifying the operating system of a remote user/client (column 11, lines 1-4) to make sure that a desired operating system is actually loaded in the remote user/client.

The Appellant respectfully submits that the Examiner has failed to show that modifying the operating system of a server, as taught by McNabb, would be “analogous art” with modifying the operating system of a client, as taught by England. The Appellant further notes that, as acknowledged by the Examiner, McNabb does not disclose levels of Trust, whereas England does.

The Appellant respectfully submits that the Examiner has failed to show why the server related teachings of McNabb, not disclosing levels of trust, and the client related teachings of England, disclosing levels of trust, would be analogous art, and has altogether failed to show that McNabb and England are analogous art.

#### The combination of McNabb and England does not lead to claim 1

As detailed pages 19-21 of the Appeal of January 4, 2008, both McNabb and England fail to disclose or suggest creating a log of the performance of specific processes only, and even teach away from such log or from “*a log of the performance of the processes performed according to the specified levels of trust*” as claimed in claim 1.

In page 13 of the Answer, the Examiner opines that claim 1 does not exclude the logging of processes that may not have been performed according to

the specific levels of trust. The rationale of the Examiner is that "if every process or operation in the system is logged, then clearly any processes performed according to specified levels of trust are logged, as claimed".

The Appellant respectfully disagrees. Claim 1 recites: "*the computing platform executing the service according to the specification and logging performance of at least one of the processes for which a level of trust was specified; and*

*the computing platform providing the requester with a log of the performance of the processes performed according to the specified levels of trust".*

By opining that "claim 1 does not exclude the logging of processes that may not have been performed according to the specific levels of trust", the Examiner opines that claim 1 above has the same scope as a claim that would, instead of the above features, recite: "*the computing platform executing the service according to the specification and logging performance of ~~at least one of~~ the processes for which a level of trust was specified; and*

*the computing platform providing the requester with a log of the performance of the processes ~~performed according to the specified levels of trust".~~*

In other words, the Examiner denies meaning to the distinguishing language of claim 1, and then opines that claim 1 does not distinguish from the prior art. The Appellant respectfully submits that the above interpretation of the language of claim 1 goes beyond giving to the claims the "broadest reasonable interpretation consistent with the specification".

Further, the Appellant respectfully submits that, contrary to the assertion of the Examiner, claim 1 clearly excludes the logging of processes that have not been performed according to the specific levels of trust. For example, claim 1 recites "*logging performance of at least one of the processes for which a level of trust was specified"; and "providing the requester with a log of the performance of the processes*

*performed according to the specified levels of trust*". The Appellant notes that "*a log of the performance of the processes performed according to the specified levels of trust*" distinguishes from "*a log of the performance of the processes*". The skilled person readily understands that providing a log of "every process or operation in the system", as opined by the Examiner, results in providing a mass of information that is not usable as such by a requester, contrary to "*a log of the performance of the processes performed according to the specified levels of trust*" as claimed.

The rationale of the Examiner is comparable to opining that providing a yellow pages book reads on providing a list of the ten best restaurants of the town. The Appellant respectfully disagrees and submits that even if it can be argued that the ten best restaurants are actually named in the yellow pages book, a requester cannot extract the information relating to what the ten best restaurants are from the yellow pages book, whereby a yellow pages book cannot be used as a list of the ten best restaurants of the town, and can therefore not be called a list of the ten best restaurants of the town.

Similarly, in the present instance the requester could not extract the "*log of the performance of the processes performed according to the specified levels of trust*" from a log of "every process or operation in the system", as opined by the Examiner. It follows that the recited "*log of the performance of the processes performed according to the specified levels of trust*" distinguishes from a log of "every process or operation in the system", contrary to the Examiner's opinion.

In page 14 of the Answer, the Examiner opines that access control mechanisms that prevent covering of tracks or elimination of evidence, as the audit track of McNabb, do not necessarily constitute a teaching away from providing a user with a log. The Examiner notes in particular that "although

these access controls clearly prevent writing to the audit track or logs [...] there is nothing to suggest that read access to the audit trails is limited in any way".

The Appellant respectfully disagrees. McNabb emphasizes that "once malicious users crack the perimeter defenses, they can get the keys and trick the authentication system into accepting their false identities, and the system and all its resources are rendered defenseless". The skilled person readily understands that should the audit trail of McNabb be available for reading by any user, it would provide invaluable information to a malicious user looking for cracks in the defenses of McNabb's system

In page 14 of the Answer, the Examiner further opines that the Appellant provides no evidence in support of stating that "the boot log of England is not provided to the user". The Appellant notes that England recites (see Abstract) that "a record of the loading of each component is placed into a boot log that is protected from tampering through a chain of public-private key pairs". The Appellant notes that the skilled person readily understands that a chain of public-private key pairs such as used for protecting England's boot log forms part of an encryption scheme that renders the boot log unreadable to a user.

At least in view of the above, the Appellant respectfully submits that both McNabb or England actually teach away from limiting read access to the audit trails or logs, contrary to the opinion of the Examiner, and thus teach away from "providing the requester with a log of the performance of the processes" as recited in claim 1.

### Further considerations

In pages 10-11 of the Answer, the Examiner opines that the Appellant has

failed to provide specific evidence to assert that “it seems a bit fast to conclude that McNabb and England are analogous art” and that “the Examiner has failed to show why a combination of McNabb and England would guarantee the ability to distinguish between trusted and non-trusted systems executing on the same computer”.

The Appellant notes that it has now been detailed above how the Examiner has failed to show that McNabb and England would be analogous art, and how the Examiner has failed to show that there would even be trusted and non-trusted systems executing on the same computer in McNabb that would have motivated the skilled person to solve the problem of how to guarantee the ability to distinguish between trusted and non-trusted systems.

In page 12 of the Answer, the Examiner opines that McNabb’s teachings are not limited to servers and England’s teachings are not limited to clients.

The Appellant notes that it has now been detailed above why McNabb’s teachings are limited to servers and why England’s teachings are limited to clients, contrary to the Examiner’s assertions.

In page 14 of the Answer, the Examiner opines that the Appellant does not argue the merits of claims 2-6, 14-23, 25-26, 29 and 31.

The Appellant notes that claim 2 as pending recites that *“a level of trust is specified for at least two processes in the specification, and no performance logging takes place for at least one of the processes for which a level of trust is specified in the specification”*. The Appellant notes that claim 2 as pending explicitly recites that no logging takes place for at least one process, and respectfully submits that for this reason also, claim 2 is non-obvious over McNabb and England. Indeed, as

discussed above, both McNabb and England teach creating indiscriminate boot logs / audit trails, and thus teach away from a method as recited in claim 2, which specifically recites that no logging takes place for a process.

### CONCLUSION

For the extensive reasons advanced above, Appellant respectfully contends that each claim is patentable. Therefore, reversal of the above-addressed rejections and objections and re-opening of the prosecution is respectfully solicited.

The Commissioner is authorized to charge any additional fees that may be required or credit overpayment to deposit account no. 08-2025.

I hereby certify that this correspondence is being electronically filed by EFS-Web in the United States Patent and Trademark Office on

June 12, 2008

(Date of Transmission)

Joanna Sosa

(Name of Person Transmitting)

/Joanna Sosa/

(Signature)

June 12, 2008

(Date)

Respectfully submitted,

/Robert Popa 43010/

Robert Popa

Attorney for the Appellant

Reg. No. 43,010

LADAS & PARRY

5670 Wilshire Boulevard,  
Suite 2100

Los Angeles, California 90036

(323) 934-2300 voice

(323) 934-0202 facsimile